UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN SCHLABACH,

Plaintiff,

v.

UNITED STATES OF AMERICA, and its agents,

Defendant.

No. 2:18-cv-00053-SMJ

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION PURSUANT TO RULE 59(a)(2)

Before the Court, without oral argument,[1] is *pro se* Plaintiff John Schlabach's Motion for Reconsideration Pursuant to Rule 59(a)(2), ECF No. 27. Schlabach asks the Court to reconsider its March 25, 2019 order granting Defendant the United States of America's converted motion for summary judgment, ECF No. 25. Having reviewed the file and relevant legal authorities, the Court denies Schlabach's motion for reconsideration.

Schlabach cites Federal Rule of Civil Procedure 59(a)(2) as authority for his motion for reconsideration. ECF No. 27 at 1. But that rule governs a motion for a new bench trial. *See* Fed. R. Civ. P. 59(a)(2). Because Schlabach filed his motion

[1] Because oral argument is unnecessary, the Court decides Schlabach's motion without it. *See* LCivR 7(i)(3)(B)(iii).

for reconsideration within twenty-eight days of entry of judgment in favor of the United States, the Court construes it as a motion to alter or amend the judgment under Rule 59(e). *See Rishor v. Ferguson*, 822 F.3d 482, 489–90 (9th Cir. 2016); *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001).

Altering or amending a judgment under Rule 59(e) "is an 'extraordinary remedy' usually available only when (1) the court committed manifest errors of law or fact, (2) the court is presented with newly discovered or previously unavailable evidence, (3) the decision was manifestly unjust, or (4) there is an intervening change in the controlling law." *Rishor*, 822 F.3d at 491–92 (quoting *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)); *accord McDowell v. Calderon*, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc). Schlabach fails to meet this standard.

Schlabach argues the Court erred by relying on an irrelevant declaration and irrelevant exhibits from an Internal Revenue Service ("IRS") agent who lacks personal knowledge to testify or authenticate documents. ECF No. 27 at 2–5. Thus, Schlabach objects to this evidence under Federal Rules of Evidence 401, 602, 901, and 902. *Id.* But Schlabach raises this objection for the first time in his motion for reconsideration. *See Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (stating a motion to alter or amend a judgment under Rule 59(e)

"may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation"); *accord Rishor*, 822 F.3d at 492.

While Schlabach claims he raised this objection earlier, his contention was not evidentiary in nature. He wrote, "ECF No. 22-2 . . . In its entirety contains unsubstantiated false, inflammatory, discriminatory, racist, slanderous, and prejudicial claims against me and I hereby object to their admission into the court record." ECF No. 24 at 2. The Court addressed his contention, noting, "Schlabach makes bald assertions objecting to the[IRS agent's] explanations but presents no significant probative evidence to genuinely dispute them." ECF No. 25 at 15. Schlabach never previously objected on grounds of relevance, personal knowledge, or authentication.

Regardless, Schlabach's evidentiary analysis is incorrect. The evidence is relevant because it tends to make it more probable that Schlabach is liable for frivolous filing penalties. *See* Fed. R. Evid. 401. The IRS agent had personal knowledge of the matters to which she testified because they are based on her professional experience in the IRS Frivolous Return Program as well as her own review and analysis of records in Schlabach's file. *See* ECF No. 22-2 at 2–7; Fed. R. Evid. 602. The IRS agent authenticated those records by demonstrating she has knowledge of them and they are what they purport to be—"true and correct

cop[ies]" of "[p]ertinent information contained in the [IRS Frivolous Return Program's] Master Action History for John Schlabach." ECF No. 22-2 at 6; *see also* Fed. R. Evid. 901(a)(1). The Court did not err.

Schlabach argues the Court erred by relying on the IRS agent's declaration because it said "there is no evidence." ECF No. 27 at 3. He is mistaken, as the declaration says no such thing. *See* ECF No. 22-2.

Schlabach argues the Court erred by ignoring his affidavit, which "completely contradicts" the IRS agent's declaration. ECF No. 27 at 3–5. Contrary to Schlabach's assertion, the Court considered the entire record, cited his filings numerous times, and ultimately concluded, under the applicable legal standard, that he "failed to point to specific facts establishing a genuine dispute of material fact for trial" and "failed to introduce the significant probative evidence required to defeat summary judgment." ECF No. 25 at 18; *see also id.* at 2. The Court noted "Schlabach makes bald assertions objecting to the[IRS agent's] explanations but presents no significant probative evidence to genuinely dispute them." *Id.* at 15. The Court also explained that, "to the extent Schlabach has identified genuine factual disputes, they are not material because they do not affect the outcome of this litigation." *Id.* at 18. Throughout the process, the Court "[v]iew[ed] all evidence and dr[e]w[] all reasonable inferences in the manner most favorable to Schlabach." *Id.* His claims still failed. *See id.*

Schlabach argues the Court erred by granting summary judgment in favor of the United States without giving him an opportunity to obtain discovery. ECF No. 27 at 2–4. But Schlabach is not entitled to discovery where, as here, the Court (1) lacks subject matter jurisdiction over three out of his four claims, and (2) concludes his fourth claim is, as a matter of law, based on a frivolous tax position that a reasonable person would know is meritless and reflects indefensible tax evasion. *See* ECF No. 25 at 5, 7, 12, 16, 18. Discovery would not change either of the Court's determinations. The factual disputes Schlabach raises are immaterial to the determinative issues in this case.

Schlabach argues the Court erred because the tax position he took could not be frivolous where he cited to a valid federal statute. ECF No. 27 at 3. As the Court noted, "Schlabach begins with the correct premise that currency is a redeemable obligation of the United States. But from there, Schlabach distorts matters by claiming the United States' obligation to redeem currency automatically offsets his tax obligation to the United States." ECF No. 25 at 11–12; *see also id.* at 15–16. This distortion, the Court concluded, "is frivolous . . . because it lacks any objective basis in fact or law." *Id.* at 16. It is irrelevant that Schlabach subjectively believed his tax position was correct. *Id.* at 16–17. A reasonable person would know Schlabach's tax position is meritless and reflects indefensible tax evasion. *Id.* at 16.

Schlabach argues the Court erred by assuming, without evidence, that the tax

assessments were validly made in accordance with mandated procedures. ECF No. 27 at 3–4. The decision rests on ample evidence, as the Court previously directed both parties to "submit all evidence pertinent to the summary judgment motion, as it relates to the specific facts outlined." ECF No. 19 at 12–13. The United States then submitted the IRS agent's declaration, which "explains how IRS personnel followed supervisor approval procedures in determining argument codes 16 and 30 apply to Schlabach's position." ECF No. 25 at 14–15. While the United States did not submit all evidence that conceivably could have been submitted, what it submitted was sufficient to meet its burden of proving Schlabach is liable for frivolous filing penalties. *See id.* at 7–9, 17–18. Nothing more was required.

Considering all, no grounds exist for the Court to grant Schlabach the extraordinary remedy of altering or amending the judgment under Rule 59(e). The Court will not reconsider the judgment in favor of the United States.

Accordingly, **IT IS HEREBY ORDERED**:

1. Plaintiff's Motion for Reconsideration Pursuant to Rule 59(a)(2), **ECF No. 27**, is **DENIED**.

2. The Court certifies that an appeal of this Order could not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A).

//

//

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to *pro se* Plaintiff and Defendant's counsel.

DATED this 16th day of May 2019.

SALVADOR MENDOZA, JR.
United States District Judge